IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10760 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANNAPURNA SAMUDAYIK SAHKARI KHETI MANDALI
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR JD AJMERA with MR AS PATEL for the Petitioner
MR SATYAM CHHAYA, ASSISTANT GOVERNMENT PLEADER for Respondent Nos.1-2
MR KD ACHARYA for Respondent No.3
MR AC THAKORE for Respondent No.4

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 19/07/2007

ORAL JUDGMENT

1. The petitioner – Annapurna Samudayik Sahkari Kheti Mandali, through its President Shri Ghanshyambhai Mohanbhai Dalvadi is

before this Court.

It is stated in paragraph No.1 of the memo of the petition as under:

> "1. The petitioner is a registered cooperative society and its members as well as its President are nationals and citizens of India. They are, therefore, entitled to avail of all the protections including the protection of fundamental rights enshrined under the Constitution of India."

In paragraph No.3 of the memo of the petition it is stated as under:

> "3. The petitioner society is registered on 30.8.1962 under the Societies Registration Act. It is a corporate body and has a perpetual succession. The purpose of the society is to cultivate the land jointly of the members belonging to backward classes. The petitioner- society has been carrying out joint cultivation through its members and other employees, if need be....."

The petitioner society was granted land by the Deputy Collector by order dated 05.03.1963.

2. Mr.J.D.Ajmera, learned advocate for the petitioner – society made available a copy of Form No.I (1) dated 03.01.1968, which shows that the land was granted to the petitioner – cooperative society.

3. In the year 1984, the Registrar, Cooperative Societies passed

an order for cancellation of the registration of the society, as the society was found to have not complied with certain provisions of law. Pursuant to that, the Deputy Collector passed an order in a case for breach of condition being Case No.25/1984-85 on 09.02.1985 for forfeiture of the land.

4. Learned advocate for the petitioner submitted that though the order was passed, physically, the petitioner – society was not dispossessed of the land. Later on, in a challenge to the said order of the Deputy Collector, the Collector passed order dated 12.11.1999, re-granting the land to the petitioner – society.

5. Against this order of the Collector for re-grant, third party, who are respondent Nos.3 and 4, filed revision application before the Secretary (Appeals). The Secretary (Appeals) by order dated 07.06.2001, held that the order of the Collector is not valid.

The aforesaid order is passed without taking into consideration the order passed by the Government dated 26.04.2001, which is produced at Annexure-”K” to this petition.

6. In view of the aforesaid facts, learned advocate for the petitioner relied upon a decision of the Division Bench of this Court in the matter of **BHAGWANJI BAWANJI PATEL VS. STATE OF GUJARAT AND ANOTHER**, reported in 1971 (12) GLR 156, wherein the Division Bench was pleased to hold as under:

“There is no provision in the Bombay Land Revenue Code

whereby the State Government can review its own order already passed in exercise of its powers under sec. 211 of the Code. It may, if permissible in law, have recourse to a remedy by filing a suit in a civil Court. But it cannot review its own order.

The State Government can under sec. 211 of the Bombay Land Revenue Code pass any order modifying, annulling or reversing the order. It can also pass such order thereon, as it deems fit. Not passing any order contemplated therein, would obviously mean affirming the order and that way not considering it to be a fit case for interference in revision under sec. 211 of the Code.

Held, that in the instant case, the letter by the Secretary of the Gujarat Government contained a decision which was arrived at only under sec. 211 of the Bombay Land Revenue Code and since it found no reason to interfere with the order of the Commissioner in appeal to which the State was itself a party, it affirmed the same. It had thus exercised its power under sec. 211 and in absence of any other provision giving any power to review that decision it had exceeded its powers in issuing notice under sec. 211 of the Code."

7. In view of the aforesaid settled legal position, the Court finds that the order passed by the Secretary (Appeals) dated 07.06.2001 is without jurisdiction and is a nullity in the eyes of law in view of the law declared by the Division Bench of this Court in the aforesaid judgment and order.

8. In the result, the petition is allowed. Order of the Secretary (Appeals) dated 07.06.2001 is quashed. Order dated 12.11.1999 of

the Collector prevails. Rule is made absolute with no order as to costs.

(RAVI R.TRIPATHI, J.)

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